THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26772 OF 2007

Date: 14.12.2007

Between:

Ningibothu Subrahmanyam

. . .Petitioner

AND

Vizianagaram Municipality, Vizianagaram.

. . .Respondent

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26772 OF 2007

ORDER:

This writ petition is filed for a writ of mandamus to declare the action of respondent – municipality in returning the plan submitted by the petitioner for construction of building in Survey No.70/1C, Vizianagaram Bit-I, Vizianagaram vide proceedings, dated 03.09.2007 as illegal, arbitrary, null and void and in violation of Article 300A of Constitution of India. The petitioner also sought for a direction to the respondent to reconsider his application without referring to the objections, dated 03.09.2007 raised by the municipality.

The petitioner claims to have purchased an extent of 427.82 sq.yards of land vide document Nos.39 and 40 of 2006, dated 04.01.2006. As there is a dispute with respect to the said land, the petitioner filed Writ Petition No.8783 of 2006. By order, dated 10.07.2006, this Court disposed of the said writ petition with the following observations and directions:

> "The controversy in this writ petition is whether the land allotted to BSNL by the revenue department is situated in Survey No.69 or 70.
> The petitioners' plot under two registered documents is comprised in survey No.70/1 whereas the land which was handed over by MRO to BSNL is allegedly in survey No.69. Both the plots are situated adjacent to each other and therefore, there would not be any difficulty for clearly alienating the private property of the petitioners and the government land which was handed over to BSNL. This can be sorted out by MRO by personally taking up survey in the presence of the petitioners as well as the representative of BSNL.

> Accordingly, the writ petition is disposed of directing MRO, second respondent herein, to conduct survey of the disputed area as indicated hereinabove and pass appropriate orders in the matter. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Till then status quo obtaining as on today shall be maintained. No costs."

Mandal Revenue Officer, Vizianagaram, after conducting joint survey along with Town Surveyor and Mandal Surveyor, issued certificate, dated 09.08.2006, which reads as under:

> "Certified that the land in S.No.69 and 70/1C of Vizianagaram Bit – I has been surveyed jointly by the Town Surveyor and Mandal Surveyor in presence of Mandal Revenue Officer, Vizianagaram as per the orders of Hon'ble High Court, Andhra Pradesh, Hyderabad in W.P.No.8783/2006, dt. 10-7-06, filed by Sri. Yelavarthi Rambabu and Sri. K.Jagannadha Sastry. The writ petitioners purchased the land in S.No.70/1C through registered document No.39/06 and 40/06. In the joint survey, it is established that the land in S.No.70/1C of Vizianagaram Bit- I of Vizianagaram Mandal is private land. Therefore, it is certified that the land covered by S.No.70/1C of Vizianagaram Bit-I of Vizianagaram Mandal is private zeroyathi land. It is not Government land or assigned land."

The petitioner approached respondent municipality for sanctioning a building plan for constructing Ground+2 floors. The said application was rejected by respondent-municipality by proceedings, dated 03.09.2007, which is impugned in this writ petition.

Heard Sri Balaji Medamalli, learned counsel for the petitioner and Sri S.Nageswara Reddy, learned Standing Counsel for the respondent.

In compliance with the direction given by this Court in Writ Petition No.8783 of 2006, Mandal Revenue Officer after conducting joint inspection found that the property purchased by the petitioner under registered document Nos.39 and 40 of 2006 falls in Survey No.70/1C of Vizianagaram Bit-I of Vizianagaram Mandal. In the impugned endorsement, it is mentioned that an extent of 387.82 sq.yards, which is part of the land over which the petitioner is seeking to construct building falls in Survey No.69/3 and that only an extent of 40 sq.yards falls in Survey No.70/part. In the face of the certificate issued by Mandal Revenue Officer, which is evidently not considered by respondent municipality, I am prima facie of the opinion that the contents of the impugned endorsement may not reflect the ground realities.

Therefore, without going into the merits of the case, I deem it appropriate to direct respondent municipality to re consider the application of the petitioner for building permission taking into account certificate, dated 09.08.2006 issued by Mandal Revenue Officer, Vizianagaram, a copy of which the petitioner should produce before respondent municipality within two weeks from today and respondent municipality shall re-examine the application of the petitioner and decide within a period of three weeks thereafter.

Subject to the above directions, the writ petition is disposed of.

C.V.NAGARJUNA REDDY, J

14th DECEMBER, 2007

Note: furnish c.c. in three days.

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